

IN THE SUPREME COURT OF OHIO

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|----------------|---|--------------------|
| James Jones, |) | |
| |) | |
| Appellant, |) | |
| |) | Case No. 2022-1049 |
| vs. |) | |
| |) | |
| State of Ohio, |) | |
| |) | |
| Appellee. |) | |

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JAMES JONES

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***EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION, IS OF GENERAL PUBLIC INTEREST,
AND WHY LEAVE TO APPEAL SHOULD BE GRANTED IN THIS CASE***

The Eighth District Court of Appeals' decision presents numerous substantial constitutional questions and is of general public interest as the importance of fundamental constitutional rights is in question. The Eighth District Court of Appeals erred in affirming the trial court's improper application of the factors set forth in R.C. 2929.14(C)(4) in imposing consecutive sentences. The sentence was unsupported by evidence and failed to comport with the plain language of R.C. 2929.14. The constitutionally mandated right to due process demands that sentences be supported in fact. Where they do not, such sentences result in a violation of not only of those rights to due process, but also the right to be free from cruel and unusual punishments.

This Court has established that a defendant-appellant is entitled to a "meaningful" appellate review of his sentence. An appellant's right to meaningful appellate review is violated when a court of appeals fails to conduct the proper analysis pursuant to R.C. 2953.08(G)(2) in reviewing the lower court's imposition of consecutive sentences.

Appellant was sentenced in a manner inconsistent with the purposes of felony sentencing in Ohio. He was sentenced to consecutive terms, despite the trial court's failure to make all required findings pursuant to R.C. 2929.14(C)(4). Mr. Jones' right to meaningful appellate review was kneecapped by the failure of the court of appeals in reviewing the trial court's findings and/or the evidence in the record to support these findings. As such, this felony case is of great public interest and involves questions of constitutionality under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution as well as Art. I, Sec. 9, 10 of the Ohio Constitution. A thorough review of the record will show that the Eighth District Court of Appeals erred, and that Appellant's case must be remanded to the trial court for further proceedings.

STATEMENT OF THE CASE AND FACTS

Appellant James Jones was indicted in the Cuyahoga County Court of Common Pleas on two different cases. In CR-20-649028, Mr. Jones was indicted on March 4, 2020, on the following counts: two counts of Trafficking in violation of R.C. 2925.03(A)(2), felonies of the third degree, with a one-year firearm specification pursuant to R.C. 2941.141(A), a schoolyard specification pursuant to R.C. 2925.01(P), and forfeiture specifications of a firearm, scale, and other property pursuant to R.C. 2941.1417(A); four counts of Drug Possession in violation of R.C. 2925.11(A), felonies of the fourth degree, with a one-year firearm specification pursuant to R.C. 2941.141(A) and forfeiture specifications of a firearm, scale, and other property pursuant to R.C. 2941.1417(A); one count of Possessing Criminal Tools in violation of R.C. 2923.24(A), a felony of the fifth degree, with forfeiture specifications of a firearm, scale, and other property pursuant to R.C. 2941.1417(A); and one count of Having Weapons Under Disability in violation of R.C. 2923.13(A)(3), a felony of the third degree, with a forfeiture of a weapon while under disability specification pursuant to R.C. 2941.1417(A).

In CR-21-657235, Mr. Jones was indicted on March 5, 2021, on one count of Operating a Vehicle while Under the Influence in violation of R.C. 4511.19(A)(2)(a), a felony of the third degree, and one count of Operating a Vehicle while Under the Influence in violation of R.C. 4511.19(A)(1)(a), a felony of the third degree.

On July 15, 2021, Mr. Jones pled guilty in both cases. In CR-20-649028, Mr. Jones pled guilty to Trafficking with the schoolyard and forfeiture specifications in count one, Trafficking with the forfeiture specifications in count three, Possession of Criminal Tools with forfeiture specifications in count seven, and Having Weapons Under Disability with the forfeiture specification in count eight; the remaining counts were nolle. In CR-21-657235, Mr. Jones pled

guilty to an amended count two of Physical Control of a Vehicle while Under the Influence in violation of R.C. 4511.194(B)(1), a misdemeanor of the first degree. Count one was nolle.

On August 19, 2021, Mr. Jones was sentenced in both cases. In CR-20-649028, Mr. Jones received thirty (30) months on count one, eighteen (18) months on count three, twelve (12) months on count seven, and thirty (30) months on count eight. The trial court imposed consecutive sentences for counts one and eight, with the remaining counts running concurrently, for a total sentence of sixty (60) months. In CR-21-657235, Mr. Jones was sentenced to time served.

A Notice of Appeal was filed for each case, which were consolidated for the purposes of appeal. After briefing, the Eighth District Court of Appeals issued a decision on June 23, 2022, affirming the judgment of the trial court but remanding the matter to the trial court to issue a nunc pro tunc sentencing entry incorporating all of the consecutive-sentence findings the trial court made at sentencing. *State v. Jones*, 8th Dist. Cuyahoga No. 110833, 2022-Ohio-2133.

On August 23, 2022, Mr. Jones filed a Notice of Appeal and Motion for Delayed Appeal with this Court, which this Court granted. On October 11, 2022, this appeal was dismissed for want of prosecution. *10/11/2022 Case Announcements #2*, 2022-Ohio-3591. However, this Court granted Mr. Jones' Motion for Reconsideration on December 13, 2022, allowing Mr. Jones to proceed with filing his memorandum in support of jurisdiction. *12/13/2022 Case Announcements*, 2022-Ohio-4380.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: A consecutive sentence is unconstitutional where the trial court fails to make all required findings pursuant to R.C. 2929.14(C)(4) and fails to set forth evidence to support its findings in imposing consecutive sentences.

In imposing consecutive sentences, the trial court failed to make all of the required statutory findings under R.C. 2929.14(C)(4) as well as failed to set forth evidence from the record to support its findings, which resulted in an unconstitutional sentence violating Mr. Jones' constitutionally

guaranteed rights provided by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution as well as Art. I, Sec. 9 of the Ohio Constitution.

Revised Code 2929.14(C)(4) governs the imposition of consecutive sentences and provides the following:

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime **or** to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct **and** to the danger of the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed on or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, **and** the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(Emphasis added).

The General Assembly “created a statutory presumption in favor of concurrent sentences and further directed courts to make statutorily enumerated findings prior to imposing consecutive sentences[.]” *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 4.

In order to impose consecutive terms of imprisonment, a trial court is required to make *the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry*, but it has no obligation to state reasons to support its findings. Nor is it required to give a talismanic incantation of the words of the statute, *provided that the necessary findings can be found in the record and are incorporated into the sentencing entry*.

(Emphasis added.) *Id.* at ¶ 37.

In the instant case, the trial court failed to make all necessary findings and failed to support its findings with evidentiary support as required for the imposition of consecutive sentences pursuant to R.C. 2929.14(C)(4). In addition, the trial court failed to include all of its findings in Mr. Jones' sentencing entry as required by *Bonnell*.

As to the first required finding, the trial court conducted the proper analysis in finding consecutive sentences were "necessary to protect the public from future crime by [Mr. Jones]." Tr. 62. Additionally, in support of this finding, the trial court set forth the following: "As I said, 36 arrest cycles in 37 years of life. So - and you've done the same crimes over and over again. So I believe it's necessary to protect the public from future crime." *Id.* Thus, the trial court's analysis under this required finding was proper under R.C. 2929.14(C)(4). The trial court also properly memorialized this finding in the sentencing entry. However, the trial court's analysis on the remaining required findings were flawed or incomplete and/or not included in its sentencing entry.

For the second finding, that consecutive sentences are not disproportionate to the seriousness of the conduct *and* to the danger the offender poses to the public, the trial court failed to conduct the two-part analysis as set forth in R.C. 2929.14(C)(4). At Mr. Jones' sentencing hearing, the trial court stated, "And 60 months is not disproportionate to the crimes you have committed in this case[.]" Tr. 62. It could be reasonably inferred that the trial court was conducting the proper analysis for the "seriousness of the conduct" under R.C. 2929.14(C)(4) when discussing the crimes Mr. Jones had committed in this case. However, the trial court failed to mention all together the disproportionality of consecutive sentences as to the danger Mr. Jones posed to the public. The plain language of R.C. 2929.14(C)(4) requires a trial court to conduct a two-part analysis since this finding is in the conjunctive as to the seriousness of the conduct **and** the danger

the offender poses to the public. Furthermore, while the trial court's sentencing entry does include the statutory language regarding the danger posed to the public, the trial court did not make such a finding at Mr. Jones's sentencing hearing.

The failure to make this finding as to the disproportionality to the danger an offender poses renders Mr. Jones' sentence contrary to law. *State v. Lariche*, 8th Dist. Cuyahoga No. 106106, 2018-Ohio-3581; *State v. Cousino*, 6th Dist. Sandusky No. S-17-033, 2018-Ohio-2589 (trial court's statement that sentences were "not disproportionate" is not sufficient); *State v. Elmore*, 7th Dist. Jefferson No. 14 JE 0021, 2016-Ohio-890 (although finding of disproportionality made in journal entry, failure to make it during the sentencing hearing requires vacating consecutive sentences); *State v. Stowes*, 8th Dist. Cuyahoga No. 98744, 2013-Ohio- 2996 (failure to make disproportionality finding). As such, the trial court failed the two-part analysis for this second required finding under R.C. 2929.14(C)(4), thus rendering Mr. Jones' sentence contrary to law.

As to the third required finding, the trial court seemed to rely upon all three circumstances set forth in R.C. 2929.14(C)(4)(a)-(c) during the sentencing hearing, but only reflected R.C. 2929.14(C)(4)(a) in its sentencing entry. *See Jones* at ¶ 17.

R.C. 2929.14(C)(4)(a) requires a finding that the offenses were committed while the defendant was awaiting trial or sentencing, was under some form of community control, or was under post-release control. As noted *supra*, the trial court found that these offenses were committed while Mr. Jones was "already under arrest on a previous case[.]" Tr. 63. This is both legally and factually incorrect.

R.C. 2929.14(C)(4)(a) clearly sets forth specific circumstances for which imposition of consecutive sentences would be appropriate, and nowhere in the text of this statute does it state that being "under arrest" in another case would qualify. While the sentencing entry contained the

correct standard set forth under R.C. 2929.14(C)(4)(a), the trial court's statements at Mr. Jones' hearing established this finding was made on a factor unsupported by statute. Thus, the trial court failed to make the required finding pursuant to R.C. 2929.14(C)(4)(a) in imposing consecutive sentences. Moreover, the offenses for which consecutive sentences under CR-20-649028 were imposed *predated* his arrest on the other cases for which he was sentenced. Thus, Mr. Jones was not subject to any of the specific circumstances set forth in R.C. 2929.14(C)(4)(a) in which the trial court could base this finding upon. As such, the trial court's reliance on R.C. 2929.14(C)(4)(a) in imposing consecutive sentences was both legally and factually flawed, thus resulting in a sentence contrary to law.

Next, R.C. 2929.14(C)(4)(b) requires that the trial court must find that multiple offenses were committed as part of one course of conduct and that the harm "was so great or unusual" that a single prison term would not "adequately reflect" the seriousness of the offender's conduct. At Mr. Jones's sentencing hearing, the trial court stated,

Also, at least two or more of the multiple offenses were committed as part of one or more courses of conduct and, like I said, 60 months is not -- is not too much for the crimes committed and it adequately reflects the seriousness of your conduct.

Tr. 63.

Here, the trial court failed to make both required findings under R.C. 2929.14(C)(4)(b). As set forth *supra* as to the second required finding, the plain language of R.C. 2929.14(C)(4)(b) also requires a trial court to conduct a two-part analysis since this finding is in the conjunctive as to the multiple offenses committed in the same course of conduct and the harm inflicted as a result. While the trial court addressed the first finding regarding multiple offenses committed as part of one course of conduct, it failed to conduct the proper analysis as to the harm caused. The trial court's statement that consecutive sentences "[were] not too much for the crimes committed" failed to

address the actual standard of harm set forth in R.C. 2929.14(C)(4)(b), which must be "so great or unusual" to warrant consecutive sentences. Moreover, the trial court failed to address this finding in its sentencing entry as required pursuant to *Bonnell*. Based on the trial court's failure to make the required findings pursuant to R.C. 2929.14(C)(4)(b) and failed to address this finding in its sentencing entry, Mr. Jones's sentence is contrary to law.

As to the last factor set forth under R.C. 2929.14(C)(4)(c), the trial court did make the required statutory finding as to the history of criminal conduct and the necessity to protect the public from future crime. However, again the trial court failed to incorporate this finding in Mr. Jones's sentencing entry as required under *Bonnell*.

The trial court failed to make all required findings to impose consecutive sentences as required under R.C. 2929.14(C)(4). Moreover, the trial court failed to incorporate all of its findings in Mr. Jones's sentencing entry as required pursuant to Ohio Supreme Court precedent. As such, the consecutive sentences were inconsistent with R.C. 2929.14 and ordered in violation of Mr. Jones's constitutionally guaranteed rights provided by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution as well as Art. I, Sec. 9 of the Ohio Constitution. For these reasons, this Court should accept jurisdiction.

Proposition of Law No. II: A court of appeals violates an appellant's right to meaningful appellate review and its obligations pursuant to R.C. 2953.08(G)(2) when it fails to conduct the proper de novo review in determining whether the trial court made all required findings under R.C. 2929.14(C)(4) and whether the record contains an evidentiary basis sufficient to support each required finding.

The Eighth District Court of Appeals violated Mr. Jones's right to meaningful appellate review and its obligations pursuant to R.C. 2953.08(G)(2) when it failed to conduct the proper de novo review in determining whether the trial court made all required findings under R.C. 2929.14(C)(4) and whether the record contains a sufficient evidentiary basis to support such findings in imposing consecutive sentences upon Mr. Jones.

This Court has established that a defendant-appellant is entitled to a “meaningful” appellate review of his sentence. *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165, 793 N.E.2d 473, ¶ 10, *abrogated on other grounds by State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. Appellate courts review felony sentences under R.C. 2953.08(G)(2). Revised Code 2953.08(G)(2) permits an appellate court to increase, reduce, or otherwise modify a sentence, or to vacate the sentence and remand to the sentencing court for resentencing if it clearly and convincingly finds either of the following:

- (a) That the record does not support the sentencing court’s findings under division (B) or (D) of section 2929.13, division (B)(2)(E) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;
- (b) That the sentence is otherwise contrary to law.

This Court’s recent decision in *State v. Gwynne*, Slip Opinion No. 2022-Ohio-4607, is directly on point with the issues in Mr. Jones’s case. The standard of review for the imposition of consecutive prison terms is governed by the clearly and convincingly standard set forth in R.C. 2953.08(G)(2). *Gwynne* at ¶ 19. In addressing the requirements of an appellate court pursuant to R.C. 2953.08(G)(2), this Court held, “R.C. 2953.08(G)(2)’s requirement that appellate courts apply the clear-and-convincing standard on review indicates that the legislature did not intend for appellate courts to defer to a trial court’s findings but to act as a second fact-finder in reviewing the trial court’s order of consecutive sentences.” *Id.* at ¶ 20.

In reviewing consecutive sentences, this Court held that the first step “is to ensure that the consecutive-sentence findings under R.C. 2929.14(C)(4) have been made—i.e., the first and second findings regarding necessity and proportionality, as well as the third required finding under R.C. 2929.14(C)(4)(a), (b), or (c).” *Id.* at ¶ 25. “If the trial court fails to make these findings, and that issue is properly raised on appeal, then the *appellate court must hold that the order of*

consecutive sentences is contrary to law and either modify the sentence or vacate it and remand the case for resentencing.” (Emphasis added.) *Id.*

Once the reviewing court determines that the necessary findings under R.C. 2929.14(C)(4) were made, the next step is to determine whether those findings are clearly and convincingly supported by the record. *Id.* at ¶ 26. “[I]f even one of the consecutive-sentence findings is found not to be supported by the record under the clear-and-convincing standard provided by R.C. 2953.08(G)(2), then the trial court's order of consecutive sentences must be either modified or vacated by the appellate court.” *Id.* R.C. 2953.08(G)(2) requires an appellate court to vacate or modify the trial court’s imposition of consecutive sentences “if, upon review of the record, the court is left with a firm belief or conviction that the findings are not supported by the evidence.” *Id.* at ¶ 27.

In applying the clear and convincing standard when reviewing the record, “the first core requirement is that there be some evidentiary support in the record for the consecutive-sentence findings that the trial court made.” *Id.* at ¶ 28.

If after reviewing the applicable aspects of the record and what, if any, evidence it contains, the appellate court finds that *there is no evidence in the record* to support the consecutive sentence findings, then the appellate court *must reverse the order of consecutive sentences*. A record that is devoid of evidence simply cannot support the findings required by R.C. 2929.14(C)(4); *there must be an evidentiary basis upon which these findings rest*.

(Emphasis added.) *Id.* Next, for any evidentiary basis that is present, it must be “adequate to fully support the trial court's consecutive-sentence findings[,]” which requires an appellate court to consider “both the quantity and quality of the evidence in the record that either supports or contradicts” the findings for consecutive sentences. *Id.* at ¶ 29. “An appellate court may not, for example, presume that because the record contains *some evidence relevant to and not inconsistent*

with the consecutive-sentence findings, that this evidence is enough to fully support the findings.” (Emphasis added.) *Id.*

In affirming Mr. Jones’s sentence, the court of appeals failed to fulfill its obligations in reviewing the trial court’s imposition of consecutive sentences. The court of appeals set forth the following regarding the trial court’s statements at Mr. Jones’s sentencing pertaining to consecutive sentences:

In the instant matter, the trial court specifically stated that 60 months was not disproportionate to the crimes committed in the cases or the seriousness of appellant's conduct and that at least two of the offenses were committed as part of the same course of criminal conduct. In addition, the court explicitly stated that consecutive sentences were necessary to protect the public from future crime by appellant.

Jones, 8th Dist. Cuyahoga No. 110833, 2022-Ohio-2133, at ¶ 14.

In addressing Mr. Jones’s argument as to the two-part analysis under the second required finding set forth in R.C. 2929.14(C)(4), the court of appeals concluded, “[W]hen viewed in their entirety, the trial court's statements on the record clearly indicate that the trial court considered proportionality with regard to both the seriousness of appellant's conduct and the danger he posed to the public.” *Jones*, 8th Dist. Cuyahoga No. 110833, 2022-Ohio-2133, at ¶ 16. The court of appeals went on to state,

In this case, the record reflects that appellant had had 36 arrest cycles in 37 years, several of which were related to drugs. As noted by the trial court, the amount of drugs involved in this case was greater than just personal use. Appellant also had multiple gun cases and was presently being sentenced on a case involving a gun. We cannot clearly and convincingly conclude that the record does not support the trial court's R.C. 2929.14(C)(4) findings.

Id. at ¶ 21.

The court of appeals’ analysis failed to comport with its obligations in reviewing consecutive sentences under R.C. 2953.08(G)(2) as set forth in *Gwynne*. Mr. Jones’s prior record

for drugs does not on its face support by the clear and convincing standard that Mr. Jones poses a danger to the public such that the imposition of consecutive sentences is required. This Court established in *Gwynne* that the record containing *some* evidence relevant to or not inconsistent with consecutive sentence findings is wholly insufficient to fully support such findings. General, vague statements to Mr. Jones's non-violent criminal history does not amount to sufficient evidence in support of this finding as to danger posed to the public. As such, the court of appeals failed its obligations set forth under R.C. 2953.08(G)(2), which violated Mr. Jones's right to meaningful appellate review.

As to the required findings under R.C. 2929.14(C)(4)(a)-(c), the court of appeals failed to engage in any de novo analysis as to whether the required findings were made and whether those findings were actually supported by the evidence in the record. The court of appeals found that the trial court imposed consecutive sentences under all three subsections and only found that the trial court erred in not including its analysis regarding R.C. 2929.14(C)(4)(b) and (c) in its sentencing entry. It is clear from the decision of the court of appeals that it did not determine whether there was any evidentiary support to make a finding under R.C. 2929.14(C)(4)(a)-(c), and ignored the factual and legal arguments set forth by Mr. Jones.

As set forth *supra*, the trial court failed to make the proper finding as to R.C. 2929.14(C)(4)(a) when it imposed consecutive sentences based on its finding that Mr. Jones committed the relevant offenses when he was "already under arrest on a previous case[.]" Tr. 63. The court of appeals, in reviewing whether the trial court made the proper finding, failed to address the fact the trial court's analysis has no basis in the text of R.C. 2929.14(C)(4)(a). In addition to this finding being wholly unsupported by statute, this finding was further unsupported by the record. The court of appeals, in reviewing the record and as set forth in Mr. Jones's appellate

briefing, should have determined whether there was any evidence to establish that Mr. Jones was in fact “under arrest” in another case at the time of these offenses. Had the court of appeals conducted the proper de novo review, it would have discovered the trial court did not make the required findings under R.C. 2929.14(C)(4)(a), nor was this finding supported by any evidence; either one of these required the court of appeals to reverse the trial court’s imposition of consecutive sentences in this case pursuant to *Gwynne*. As such, the court of appeals failed to fulfill its obligations pursuant to R.C. 2953.08(G)(2).

Further, as set forth *supra*, the trial court's statement that consecutive sentences “[were] not too much for the crimes committed” failed to address the actual standard of harm set forth in R.C. 2929.14(C)(4)(b), which must be “so great or unusual” to warrant consecutive sentences. The court of appeals failed to engage in any substantive discussion as to R.C. 2929.14(C)(4)(b), and only found the trial court erred in not including this finding in Mr. Jones’ sentencing entry. Again, the trial court failed to make the two-part finding under R.C. 2929.14(C)(4)(b), which individually required the court of appeals to reverse the imposition of consecutive sentences. The trial court set forth no evidence from the record to base any finding of harm upon.

On appeal, the court of appeals failed to engage in any discussion regarding what evidentiary support, if any, can be found in the record as to this finding. Had it conducted the proper de novo review, the court of appeals would have concluded there was no evidence in the record to support that the offenses at issue caused harm “so great or unusual” that a single prison term would not “adequately reflect the seriousness of the offender’s conduct” as required under R.C. 2929.14(C)(4)(b). Mr. Jones was convicted of drug, weapon, and traffic offenses, for which there is no named victim for any of these charges. There is no evidence in the record to base any finding of harm upon, much less harm “so great or unusual” as to impose consecutive sentences.

The court of appeals' failure to conduct the proper de novo review as to both the findings and evidentiary support in the record violated Mr. Jones's right to meaningful appellate review.

Lastly, the court of appeals failed to fulfill its obligations under R.C. 2953.08(G)(2) as to reviewing the record to determine whether there was any evidentiary basis to support the trial court's finding pursuant to R.C. 2929.14(C)(4)(c). Mr. Jones' has no prior convictions for crimes of violence, and his last drug trafficking offense, a third-degree felony, had occurred over a decade prior. Moreover, the drug offenses at issue in this case involved marijuana vape pens, which normally would have constituted a fourth-degree felony, but was elevated to a third-degree felony since Mr. Jones was within 900 feet of school, despite the fact the school was out of session for summer break at the time. Mr. Jones's priors were largely victimless crimes involving drug and traffic offenses, thus this finding that his prior criminal conduct justified the imposition of consecutive sentences was not factually supported by the record. As a result, Mr. Jones's sentence was contrary to law and the court of appeals violated his right to meaningful appellate review.

The Eighth District failed to undertake the de novo review of consecutive sentences required under R.C. 2953.08(G)(2) and this Court's decision in *Gwynne*. As a result, the violation of Mr. Jones's right to meaningful appellate review compounded the violations of his constitutionally guaranteed rights provided by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution as well as Art. I, Sec. 9 of the Ohio Constitution. For these reasons, this Court should accept jurisdiction.

CONCLUSION

For the reasons discussed above, this case involves substantial constitutional questions for which leave to appeal should be granted. Further, the case is of general public interest. Appellant James Jones respectfully moves this Honorable Court to accept jurisdiction in this case so that the issues presented may be reviewed on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. Mail on this 12th day of January, 2023, to:

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